

201 KAR 5:130. Controlled substances.

RELATES TO: KRS 218A.205(3)

STATUTORY AUTHORITY: KRS 218A.205(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.205(3) requires the board to promulgate administrative regulations on: prescribing standards for controlled substances; a procedure to temporarily suspend, limit, or restrict a license if unrestricted practice poses a danger to the health, welfare, or safety of patients or the public; a procedure for the expedited review of complaints pertaining to controlled substances; and penalties for convictions of offenses related to controlled substances. This administrative regulation establishes the requirements relating to controlled substances in the practice of optometry.

Section 1. Prescribing Standards. (1) A Kentucky licensed optometrist authorized to prescribe controlled substances for humans shall:

- (a) Have a current and valid DEA number;
- (b) Register with Kentucky All Schedule Prescription Electronic Reporting (KASPER);
- (c) Prescribe controlled substances only for the treatment or relief of pain for a condition of the eye and its appendages;
- (d) Prescribe only Schedule III, IV, or V controlled substances;
- (e) Prescribe controlled substances for a quantity therapeutically sufficient, up to seventy-two (72) hours;
- (f) Examine the patient face-to-face and in-person prior to prescribing a controlled substance;
- (g) Verify the fact that the patient that is prescribed a controlled substance is who the patient claims to be;
- (h) Establish a documented diagnosis through the use of accepted medical practices; and
- (i) Keep accurate, readily accessible medical records which shall include:
 - 1. History and eye examination;
 - 2. Diagnostic, therapeutic, and laboratory results;
 - 3. Evaluations and consultations;
 - 4. Treatment objectives;
 - 5. Discussions of risk, benefits, and limitations of treatments;
 - 6. Treatments;
 - 7. Medication including date, type, dosage, and quantity prescribed; and
 - 8. Instructions and agreements.

(2) A Kentucky licensed optometrist authorized to prescribe controlled substances for humans shall not:

- (a) Dispense any controlled substances;
- (b) Write a prescription for a controlled substance that is refillable; and
- (c) Prescribe:
 - 1. With the intent or knowledge that a medication will be used, or is likely to be used, for other than a medicinal or an accepted therapeutic purpose; or
 - 2. With the intent to evade any law with respect to sale, use, or disposition of the medication.

Section 2. Temporary Suspension, Limit, or Restriction of License. (1) The board may, without benefit of a hearing, temporarily suspend, limit, or restrict the license of an optometrist authorized to prescribe controlled substances if the board finds on the basis of reasonable evidence that the licensee has violated a statute or administrative regulation the board is empow-

ered to enforce, and continued unrestricted practice by the licensee would constitute a danger to the health, welfare, or safety of the licensee's patients or of the general public.

(2) The temporary suspension, limit, or restriction of a license shall take effect upon receipt by the licensee of written notice, delivered by certified mail or in person, specifying the statute or administrative regulation violated. At the time the temporary suspension, limit, or restriction order issues, the board shall schedule a disciplinary hearing to be held in accordance with the provisions of KRS Chapter 13B within ten (10) days.

Section 3. Complaints. (1) The board shall consider all written complaints and sufficient anonymous complaints pertaining to the improper, inappropriate, or illegal prescribing of controlled substances. An anonymous complaint shall be considered sufficient if it is accompanied by sufficient corroborating evidence as would allow the board to believe, based upon a totality of the circumstances, that a reasonable probability exists that the complaint is meritorious.

(2) Upon receipt of a complaint pertaining to the improper, inappropriate, or illegal prescribing of controlled substances, the board shall:

(a) Send a copy of the complaint to the Office of the Attorney General, the Department of the Kentucky State Police, and the Cabinet for Health and Family Services within three (3) business days;

(b) Commence an investigation within seven (7) business days of the complaint; and

(c) Produce a charging decision within 120 days of the complaint, unless an extension for a definite time period is requested in writing by a law enforcement agency due to an ongoing criminal investigation.

Section 4. Penalties. (1) Pursuant to the provisions of KRS 218A.205(3):

(a) A licensee convicted of a felony offense related to prescribing a controlled substance shall, at a minimum, have a lifetime revocation on prescribing any and all controlled substances;

(b) The board shall impose restrictions short of a permanent ban from prescribing controlled substances on a licensee convicted of a misdemeanor offense related to the prescribing of controlled substances. A licensee who has been convicted of any misdemeanor offense after July 20, 2012 relating to prescribing or dispensing controlled substances in any state shall have his or her authority to prescribe controlled substances suspended for at least three (3) months, and shall be further restricted as determined by the board; and

(c) A licensee disciplined by a licensing board of another state related to the improper, inappropriate, or illegal prescribing of controlled substances shall, at a minimum, have the same disciplinary action imposed by the licensing board of the other state.

(2) A licensee who is authorized to prescribe controlled substances shall be subject to discipline by the board if:

(a) A licensee who is required to register for an account with KASPER fails to do so or does not maintain continuous registration during the licensee's term of licensure; or

(b) A licensee or applicant fails to report to the board, within thirty (30) days of the action:

1. Any conviction involving controlled substances; or

2. Disciplinary action taken by another licensure board involving controlled substances.

(3) Pursuant to the provisions of KRS 218A.205(3)(f), the board shall submit all disciplinary actions to the National Practitioner Data Bank of the United States Department of Health and Human Services either directly or through a reporting agent. (39 Ky.R. 656; eff. 2-1-2013.)